IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Crl.MC.No. 2345 of 2007()

CC.16/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER: ACCUSED

JOSEPH CHANDY, S/O.JOSEPH, AGED 58 YEARS
THOTTUVELIL HOUSE, TALIPARAMBA P.O.,
KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. ALAKODE SERVICE CO-OPERAIVE BANK,
REP.BY ITS SECRETARY, T.N.CHANDRIKADEVI,
W/O.NARENDRAN, CHENNAMANGALATH MADAM, ALAKODE,
TALIPARAMBA TALUK, KANNUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2345 of 2007

Dated this the 23rd day of July, 2007

O R D E R

Against the petitioner a private complaint has been filed and cognizance has been taken of the offence punishable under Section 380 I.P.C. The crux of the allegations is that the petitioner, who was an official of a Co-operative Bank, stealthily removed documents of the bank. Earlier, a negative final report has been filed by the police after registration of the crime. Cognizance was taken on the basis of the protest complaint by the learned Magistrate after examining the complainant and his witnesses at the precognizance stage.

2. It is contended that the allegations are unsustainable and the petitioner is entitled for premature termination of the proceedings. Powers under Section 482 Cr.P.C may be invoked and premature termination brought about, it is prayed.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court under Section 482 Cr.P.C. Such powers are to be invoked only sparingly and in exceptional cases and that too in aid of justice. Any and every error/impropriety committed by a subordinate court will not ip so facto persuade this Court or be reckoned as sufficient for this Court to invoke such powers under Section 482 Cr.P.C. Premature termination of

proceedings can be claimed by an accused in a prosecution on the basis of a private complaint in a warrant offence under Section 245(2) or 245(1) Cr.P.C. In every such case, where discharge under Section 245(2) Cr.P.C or 245(1) Cr.P.C is a possibility, it is not necessary for this Court to invoke such powers under Section 482 Cr.P.C.

4. I am, in these circumstances, of the opinion that it is for the petitioner to appear before the learned Magistrate and claim discharge under Section 245(1) Cr.P.C or if so advised, under Section 245(2) Cr.P.C. I find no reason to invoke the powers under Section 482 Cr.P.C.

5. The learned counsel for the petitioner submits that the petitioner is willing to surrender before the learned Magistrate, but a warrant of arrest has already been issued by the learned Magistrate to procure the presence of the petitioner. In the facts and circumstances of the case, I am satisfied that, appropriate directions can be issued to facilitate the appearance of the petitioner before the learned Magistrate without risk or threat of the warrant being executed against him prior to the next date of posting.

6. In the result, this Crl.M.C is allowed in part. The following directions are issued.

i) The warrant of arrest issued against the petitioner shall not be executed till 06.08.07;

ii) The petitioner shall on or before that date (06.08.07) appear before the learned Magistrate. His application for bail must be considered by the learned Magistrate on merits, in accordance with law and expeditiously - on the date of surrender itself;

iii) The petitioner shall be entitled to claim discharge under Section 245(2) or 245(1) Cr.P.C. Unnecessary insistence on personal appearance of the petitioner shall not be made by the learned Magistrate until the learned Magistrate decides, if he so decides, that charges are liable to be framed against the petitioner. Till then he shall be permitted to appear through counsel.

(R.BASANT, JUDGE)

rtr/-